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No. 83-1691

In the Supreme Court of the United States

OCTOBER TERM, 1983

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

v.

RONALD E. PAYNE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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1. Respondents claim (Br. in Opp. 17, 21) that the decision of the court of appeals does not rest upon equitable estoppel and that it instead finds an independent basis in the Administrative Procedure Act, 5 U.S.C. 702 and 706, and the associated doctrine that federal agencies must abide by their own regulations (Br. in Opp. 17-18, 22-23, 25-26). These assertions are incorrect.

a. First, respondents' claims are inconsistent with the court of appeals' opinion. As we have explained in our Petition (at 17-18), the court of appeals purported to rely upon the APA and the obligation of government agencies to follow their regulations. Unlike respondents, however, the court of appeals also acknowledged — at least nominally — the relevance of this Court's decisions rejecting the application of equitable estoppel to limit the government's ability to enforce the law. Thus, rather than simply close its

eyes to those decisions, as respondents do (see Br. in Opp. 21), the court of appeals addressed the government's argument that *Schweiker* v. *Hansen*, 450 U.S. 785 (1981), is controlling here, seeking to distinguish that case on several factual grounds (Pet. App. 16a-19a).[1] Nowhere did the court of appeals suggest that the basis assigned for its decision made it unnecessary to comply with this Court's estoppel rulings. Nor did the court below suggest that the effect of its decision was anything other than to estop the government from enforcing what it acknowledged to be "legitimate time restrictions set as a prerequisite to applying for governmental benefits" (Pet. App. 15a). Rather, the court below insisted that its decision was consistent with this Court's decisions limiting estoppel. There accordingly is no merit to respondents' contention (Br. in Opp. 21) that this case does not present any question as to the availability of equitable estoppel against the United States.

We note, moreover, that the grounds upon which the court of appeals undertook to distinguish *Hansen* are untenable, for the reasons stated in our Petition (at 13-17). Respondents have made no effort to answer our arguments in that connection. The decision below plainly cannot be reconciled with *Hansen*.

b. Even if the court of appeals had not signaled its understanding that its decision amounted to invocation of estoppel against the United States, that conclusion would be inescapable. This Court's teaching that the United States "may not be estopped on the same terms as any other

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[1]The court of appeals also undertook to distinguish (albeit on insubstantial factual grounds) *INS* v. *Miranda*, 459 U.S. 14 (1982), another of this Court's estoppel decisions (Pet. App. 17a n.27). Respondents' suggestion (Br. in Opp. 17) that the government did not argue or that the court of appeals did not consider the estoppel issue raised here is accordingly frivolous. See also Gov't C.A. Br. 17-23.

litigant" (*Heckler* v. *Community Health Services*, No. 83-56 (May 21, 1984), slip op. 8) cannot be circumvented merely by manipulating doctrinal labels. Respondents' exercise in semantics cannot conceal the fact that the relief awarded by the courts below — reopening of an expired emergency loan program in contravention of an explicit deadline having the force of law, because of the responsible agency's failure sufficiently to publicize the program — entails application of equitable estoppel as this Court has most recently defined that term: "[w]hen the Government is unable to enforce the law because [of] the conduct of its agents" (*Community Health Services*, slip op. 8). The court of appeals' decision plainly estops the FmHA from denying respondents' loan applications on the grounds that they are more than a decade out-of-time.

2. a. In any event, the relief awarded in this case is not authorized by the APA or the principles of administrative law upon which respondents rely. Without pausing to address our arguments (Pet. 19-20), respondents assert (Br. in Opp. 17-18, 25-26) that overriding of the applicable deadline for filing a loan application with FmHA constitutes "comp[ulsion] of agency action unlawfully withheld" within the meaning of 5 U.S.C. 706(1). They thus ignore the fact that the only agency action the court of appeals determined to have been improperly withheld here was the dissemination of a sufficiently informative press release.[2] The reopening of an entire expired loan program in violation of the application deadline established by law cannot accurately be characterized as simply compelling the agency to remedy a publicity defect.

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[2]Contrary to respondents' implication (Br. in Opp. 19-20), the court of appeals did not find that FmHA officials incorrectly advised members of respondents' class that emergency loans were unavailable to them. Indeed, respondents acknowledge, elsewhere in their brief (at 17 n.39), that the court of appeals "specifically declined to base its decision on misrepresentation by the FmHA * * *."

Respondents rely (Br. in Opp. 22-23) upon this Court's decisions recognizing that agency action taken in disregard of an agency's own procedural regulations may be set aside upon judicial review. But — again ignoring our argument (see Pet. 18-19) — respondents do not even attempt to show that any of these decisions irrevocably conferred upon a private party substantive benefits for which that person was ineligible as a matter of law.[3] Of course, that is precisely what the court of appeals did in this case.

b. The court of appeals' decision thus finds no support in the administrative law doctrines invoked by respondents. Indeed, that is the necessary implication of *Hansen* itself, a suit for judicial review of administrative action. See 450 U.S. at 787 & n.3.[4] Again, in *INS* v. *Miranda*, 459 U.S. 14, 16 (1982), this Court enforced its strictures against application of equitable estoppel in a case involving agency action subject to judicial review. Most recently, this Court's decision in *Community Health Services* confirms that the

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[3]Respondents observe (Br. in Opp. 17 n.39) that the court of appeals relied upon *United States* v. *Heffner*, 420 F.2d 809 (4th Cir. 1970). That decision, however, is directly contrary to this Court's subsequent decision in *United States* v. *Caceres*, 440 U.S. 741 (1979). *Caceres* itself confirms that an agency's obligation to abide by its own regulations does not override doctrines that limit the availability of particular remedies to individual litigants that are intended to avoid imposing unwarranted burdens and costs upon the public as a whole. 440 U.S. at 753-755.

[4]If, as respondents urge, the APA (or analogous statutory provisions for judicial review of administrative action) renders inapplicable this Court's decisions rejecting application of equitable estoppel against the United States, *Hansen* itself should have been decided differently. On respondents' theory, Hansen should have been granted unlimited retroactive Social Security benefits, notwithstanding the statutory limit on the reach of such benefits, as a means of "compel[ling] agency action unlawfully withheld" — *i.e.*, to fulfill the requirement of the Social Security Claims Manual that its employees advise applicants to file a written application for benefits even if their eligibility is doubted. See Pet. 21. Respondents do not answer this argument.

estoppel rulings upon which we rely may not be circumvented by casting a claim as one for judicial review of administrative action. See slip op. 6.

3. In *Community Health Services* the Court explained (slip op. 8 (footnote omitted)):

> When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well-settled that the Government may not be estopped on the same terms as any other litigant.

While the Court found it unnecessary to decide whether such an estoppel is ever permissible, it described as "substantial" the argument that no exception should be recognized to the general rule against estoppel (slip op. 8). And the Court made clear that in order to protect "the public interest in ensuring that the Government can enforce the law" (*ibid.*), a heavy burden should be imposed on a private party advocating that an exception be recognized (slip op. 9). The court of appeals' analysis does not comport with this standard and does not reflect proper regard for the "interest of the citizenry as a whole in obedience to the rule of law" (slip op. 8).

In addition, *Community Health Services* teaches that, at a minimum, a private party seeking to estop the United States must demonstrate with clarity "that the traditional elements of an estoppel are present" (slip op. 9). Those elements include justifiable detrimental reliance upon materially misleading representations or conduct by the party sought to be estopped. Slip op. 7. But *Community Health Services* makes clear that any claim of entitlement to public benefits that is at variance with published agency regulations is an unreasonable one. Slip op. 11-14. Because FmHA's regulations, which fully described the terms of the

emergency loan program, unambiguously fixed the applicable loan application deadline, any belief that tardy applications would be accepted was unreasonable. Furthermore, *Community Health Services* makes clear (slip op. 9-11) that the doctrine of equitable estoppel may not be employed to exact windfall benefits from the government. As explained in the Petition (at 21-22), the decision of the court of appeals will confer such a windfall upon respondents by effectively making a $5,000 grant and a 1% loan available to members of the class, without regard to the existence of current need or the purposes that Congress intended to serve through the enactment of the emergency loan program a decade ago.

For these reasons, and because *Community Health Services* emphasizes that limitations on equitable estoppel must be taken into account by the courts in framing relief upon review of administrative action, it would be appropriate to vacate the judgment of the court of appeals and to remand the case for consideration in light of *Community Health Services*. See *Walters* v. *Home Savings & Loan Ass'n*, No. 83-277 (June 4, 1984).

Respectfully submitted.

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